

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00290-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-19-101-018.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

PROCEDURAL HISTORY

1. Nowacki contested the 2013 assessment of his property located at 4301 W. 29th Avenue in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued its determination valuing the residential property at \$18,000 (land \$14,900 and improvements \$3,200).
2. Nowacki filed a Form 131 petition with the Board and elected to proceed under our small claims procedures. On May 20, 2019, Ellen Yuhan, our designated Administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petition. Neither she nor the Board inspected the subject property.
3. Nowacki appeared pro se. The Assessor appeared by its Hearing Officers Robert Metz and Joseph E. James. They were all sworn as witnesses.

RECORD

4. The official record contains the following:

Petitioner Exhibit A:	Property record card (“PRC”) for 2009-2015
Petitioner Exhibit B:	Property record card for 2016-2018
Petitioner Exhibit C:	GIS map of the subject property
Respondent Exhibits:	None
5. The official record for this matter also includes (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

BURDEN OF PROOF

6. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances—where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d).
7. The value of this property did not change from 2012 to 2013. Nowacki therefore bears the burden of proof.

SUMMARY OF CONTENTIONS

8. Nowacki's case:
 - a. Nowacki contends that when he purchased the property he valued the land at \$5,400. He claims the improvement had no value. The structure was collapsed, with only the slab remaining. It was and is unusable. According to Nowacki, it is a liability, but the Assessor valued the improvement at \$44,000—even though later it was reduced to \$36,000, then to \$18,000 and finally down to \$2,000.¹ The improvement never was worth those values. *Nowacki testimony; Pet'r Exs. A-C.*
 - b. Nowacki claims that in 2013 he argued that the value of the land was \$5,400. Five years later the Assessor's office made some corrections, but that doesn't help in this appeal for 2013. The Assessor has contrived a system to prolong the appeal process and not make corrections. The strategy is part of the methodology to destroy the city. *Nowacki testimony.*
 - c. Nowacki claims there are errors on the property record card. It shows he purchased the property in 1989, which is off by about 20 years. He purchased the property in 2009 or 2012. The property record card shows the neighborhood life cycle as static. The significant decrease in land value from \$14,900 to \$4,900 indicates the neighborhood is not static, but in free fall. *Nowacki testimony; Pet'r Exs. A & B.*
 - d. According to Nowacki, even at \$9,100 the value of the property is 30% higher than the current valuation and 60% higher than the fair market value. He claims the Assessor arbitrarily picked the numbers for the land and improvements. *Nowacki testimony.*
9. The Assessor recommends the 2013 assessed value be changed to a total of \$9,100 (with \$5,900 for the land and \$3,200 for the improvements). *James testimony.*

¹ The PRCs show that the improvements were never valued at \$44,000, \$36,000 or \$18,000. Nowacki was using the total assessed values not the improvement value.

ANALYSIS

10. Nowacki failed to make a prima facie case for reducing the 2013 assessment of the property. Nevertheless, the Assessor conceded the value should be reduced to \$9,100, which the Board accepts. The Board reached this decision for the following reasons:
- a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
 - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The assessment valuation date for 2013 was March 1. Ind. Code § 6-1.1-2-1.5(a).
 - c. Nowacki argued that the 2013 assessment should be \$5,400 for the land with no value assigned to the structure; however, even if the improvements have deteriorated to the point of collapse, he is required to present probative market-based evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
 - d. Nowacki claims there are errors on the property record card, specifically the year he acquired the property and the neighborhood life cycle description. But simply pointing out such errors is insufficient to rebut the presumption that the assessment is correct. *Eckerling*, 841 N.e.2d at 678. To successfully make a case for a lower assessment, a taxpayer must use market-based evidence to demonstrate that his suggested value accurately reflects the property's market value-in-use. *Id.*

- e. We also give no weight to his claims regarding the subject property’s decreasing assessment. The Assessor’s decision to decrease the assessment of this property in subsequent years does not prove its 2013 assessment was incorrect. As the Tax Court has explained, “each tax year—and each appeal process—stands alone.” *Fisher v. Carroll Cnty. Ass’r*, 74 N.E. 3d 582 (Ind. Tax Ct. 2017). Evidence of a property’s assessment in one year, therefore, has little bearing on its true tax value in another. See, e.g., *Fleet Supply, Inc. v. State Bd. of Tax Comm’rs*, 747 N.E.2d 645, 650 (Ind. Tax Ct. 2001); *Barth, Inc. v. State Bd. of Tax Comm’rs*, 699 N.E.2d 800, 805 n. 14 (Ind. Tax Ct. 1998)
- f. Because Nowacki offered no probative market-based evidence to demonstrate the correct market value-in-use of this property for 2013, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported his claim with probative evidence, the Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Local Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003). However, the Assessor admitted the proper value for the property for 2013 is \$9,100. We accept the Assessor’s admission.

FINAL DETERMINATION

The Board orders that the assessed value of the property be changed to \$9,100 for 2013, consistent with the Assessor’s admission.

ISSUED: July 30, 2019

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.